

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ERNEST L. SMITH and DEFENSE LOGISTICS AGENCY,  
DEFENSE DEPOT, Memphis, TN

*Docket No. 99-1856; Submitted on the Record;  
Issued September 20, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his September 18, 1992 employment injury.

On September 18, 1992 appellant, then a 43-year-old maintenance specialist, slipped on wet steps and hurt his back. Appellant stopped work and returned to regular duty on November 30, 1992. He resigned from his job effective January 8, 1993.

In a November 5, 1992 report, Dr. Julie Rindler, Board-certified in physical medicine and rehabilitation, indicated that she saw appellant for a consultation regarding his low back pain. Dr. Rindler indicated that appellant described his injury as a fall down the steps while working on September 18, 1992. In the process he twisted his low back and the impact of the fall was on his low back area. He described his right leg giving away at the knee as a trigger for the fall. She also stated that, since the fall, appellant had persistent pain predominantly in the right side of his low back. Dr. Rindler also stated that there were no radicular findings on examination.

In a December 11, 1992 report from Dr. Sue A. Leatherman, a Board-certified family practitioner, Dr. Leatherman indicated that she had not treated appellant for any previous episodes of back pain. She also stated that appellant was unable to work because of continued pain initially requiring bed rest and subsequently intensive physical therapy.

The Office of Workers' Compensation Programs accepted appellant's claim for low back strain and lumbar contusion on December 16, 1992.

On May 27, 1997 the Office received an April 4, 1997 x-ray report from Dr. Clifton Kirton, a chiropractor, who indicated that appellant had minimal cervical and thoracic spondylotic changes, mild osteoarthritic changes involving the lumbosacral facet articulations, biomechanical considerations and spinal subluxations.

A May 21, 1997 medical report was submitted to the Office by Dr. William Brown, a chiropractor, requesting a reopening of appellant's claim. In his report, Dr. Brown indicated that, based upon the information provided by appellant, it was his professional opinion that there was a direct causal relationship between the work-related incident of September 18, 1992 and the symptoms and diagnoses of the examination of March 31, 1997. He noted that x-rays revealed spinal subluxation and diagnosed an L5 strain, lumbalgia and degenerative discs. Dr. Brown also indicated that there did not appear to be any relevant preexisting conditions. Additionally, he indicated that Dr. Leatherman had documentation to show continued care since the injury of September 18, 1992.

By letter dated July 10, 1997, the Office advised appellant and his physician that subluxation is not compensable "under this claim" as the accepted conditions are suerviliac sprain and back contusion.

On July 14, 1997 appellant called the Office to indicate that he had a recurrence of his September 18, 1992 employment injury and requested that his claim be reopened.

On November 13, 1997 the Office advised appellant of the type of medical evidence needed to establish his recurrence claim. Additionally it advised that if he attributed his alleged recurrence "to a new set of factors of employment," then he would need to file a new claim for occupational disease.

In a letter received by the Office, on December 10, 1997, appellant submitted numerous personnel records and a letter indicating that he was forced out of his federal government position, effective January 8, 1993.

In a letter dated February 9, 1998, the Office asked for an explanation of how appellant sustained his September 18, 1992 employment injury, a list of all employers since his resignation on January 8, 1993 and an inquiry into any other previous injuries from January 9, 1993 to the present.

By letter dated February 16, 1998, appellant submitted a factual statement. He noted that he had not sustained any other injuries commencing January 9, 1993.

Appellant also provided treatment notes from November 6, 1997 to January 29, 1998.

Additionally, appellant submitted an October 15, 1997 treatment note from a Dr. Rubles noting a history of low back injury five years earlier after a fall down stairs. The doctor diagnosed low back, left knee and neck conditions.

In a January 15, 1998 report, Dr. Jean Amazan, an anesthesiologist, opined that appellant presented with pain in multiple areas of the body, neck, shoulder, upper back, lower back, right arm and the knees on both sides. However, appellant stated that he has been going to the chiropractor and seen improvements in those areas with the exception of the lower back. Dr. Amazan stated that it all began sometime in 1992 when appellant fell. He indicated that appellant had not worked since November 1994. Dr. Amazan also stated that appellant felt there was no clear evidence in his legs but asserted that they are not as strong as they should be. He

denied any sensual problems. Dr. Amazan had a magnetic resonance imaging (MRI) of the back which indicated that there were no signs of acute fracture. He also stated there were no signs of spondylitic changes but there were mild osteoarthritic changes involving lumbosacral facet articulations. Dr. Amazan also stated that appellant had lumbosacral facet osteoarthritis, possible lumbosacral radiculopathy and morbid obesity.<sup>1</sup>

In a February 6, 1998 interoffice memorandum, the Office noted that the evidence indicated that the employing establishment was undergoing a reorganization at the time appellant resigned and that he would have been afforded a position to which he was entitled had he not resigned.

In a July 10, 1998 decision, the Office denied appellant's claim for compensation because the evidence failed to demonstrate that appellant had residuals associated with his 1992 employment injury nor was it established that he stopped work due to his injury.

By letter dated July 15, 1998, appellant's attorney requested a hearing.

On January 25, 1999 a hearing was held before an Office hearing representative, at which time appellant's attorney testified that he had spoken to appellant's physician and appellant's physician indicated that appellant's condition had no present relationship to his work injury.

By decision dated April 6, 1999 and finalized April 16, 1999, the Office hearing representative affirmed the Office's July 10, 1998 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his September 18, 1992 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.<sup>4</sup>

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<sup>1</sup> Appellant later disputed that the doctor performed an MRI.

<sup>2</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

In this case, the Office accepted that appellant sustained a low back strain and a low back contusion. In July 1997, appellant indicated that he sustained a recurrence of disability. The Office requested that appellant provide medical evidence that would establish a causal relationship between his current conditions and his present disability. Appellant did not submit any rationalized medical evidence that established his present condition was causally related to his September 18, 1992 employment injury. For example, appellant did not submit a medical report, in which his treating physician explained why his claimed continuing condition would be related to the September 18, 1992 accepted injury. The only medical report supporting causal relationship is Dr. Brown's May 21, 1997 report.<sup>5</sup> However, Dr. Brown provided a conclusory statement and did not explain how a spinal subluxation would be caused or aggravated by appellant's 1992 employment injury. Other medical reports submitted by appellant did not specifically provide an opinion regarding whether appellant had any current condition causally related to the original 1992 work injury. Accordingly, the Board finds that appellant has not met his burden of proof in this case to establish a recurrence of disability or any other condition causally related to his September 18, 1992 employment injury.

The decision of the Office of Workers' Compensation Programs dated April 6, 1999 finalized April 16, 1999 is affirmed.

Dated, Washington, DC  
September 20, 2000

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>5</sup> Dr. Brown, a chiropractor, is only a physician to the extent that he treated appellant for a spinal subluxation based on x-ray. *See* 5 U.S.C. § 8101(2).